

~~Dan Rossi Summary~~

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New Jersey Clean Air Council
1985 Public Hearing and Workshop

FIFTEEN YEARS OF AIR POLLUTION CONTROL
IN NEW JERSEY: UNANSWERED QUESTIONS

REPORT AND RECOMMENDATIONS

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Introduction

The New Jersey Clean Air Council held a public hearing and workshop, "Fifteen Years of Air Pollution Control in New Jersey: Unanswered Questions," on Wednesday, March 27, 1985 on the Rutgers University campus in New Brunswick. The topic of the hearing was particularly timely for several reasons. First, New Jersey, as many other states, is just entering into a unique period of transition with respect to its thinking about the environment. This was evidenced by Governor Kean's declaration in his 1985 "State of the State" message that "defense of New Jersey's environment" ^{was} the "single most important issue" in determining the ^{states'} ~~states~~ future and that "1985 is - and must be - the year of the environment in New Jersey." Further, given the current period of budgetary distress in Washington and the Administrations' attempts to delegate additional responsibilities to the states, it has become imperative that states re-allocate resources to address these responsibilities. Finally, the recent industrial accidents in Bhopal, India and in New Jersey are indicators of potential vulnerability and the need to ^{re-assess} ~~rethink~~ ~~assessments~~ ^{of} environmental risk.

This year was ⁹ therefore an excellent time to examine our past, where we are going and where we would like to go with respect to air pollution control in New Jersey. It is a time to rethink our past goals and strategies and to establish new goals and possibly new strategies to achieve them.

Summary of Presentations

Robert E. Hughey, Commissioner, Department of Environmental Protection,
State of New Jersey
Commissioner Hughey's Remarks

Commissioner Hughey noted the changes that have occurred over time ^{the approach of} in ~~how~~ the Clean Air Council and the State ^{to} ~~have approached~~ the problem of air pollution control. The former, ^{he} has "graduated" from emphasis on the detail of the day-to-day operation to concern about broader policy issues. He referred to recent Eagleton polls which indicate a very positive public perception of the progress New Jersey has attained in improving air quality. While those perceptions may be accurate, Commissioner Hughey noted the need for additional progress, particularly for ozone. He also identified several future problem areas which will need to be addressed. The first was the transport issue, the best possible solution for which would be national standards. A second problem area was toxic air pollutants. Again, however, there is a need for national standards. The third problem area ^{INVOLVES} ~~is~~ ^{accidental} releases of air pollutants by industry. At least two companies that had more than three incidents have been asked to conduct environmental engineering studies, RISK ASSESSMENTS and safety checks to identify potential problems. ^{MANY MORE INDUSTRIAL FIRMS} ~~Another 38~~ will be requested to do so.

The Commissioner discussed two types of fear one can have in dealing with environmental issues - one the fear of having information that you are not quite sure what to do with and another the fear of not having any knowledge at all. New Jersey has opted for the first in its attempt to generate information before it is actually used. While polls consistently indicate that NJ citizens are willing to pay for cleaner air, New Jersey is nearly in a position where incremental costs are rising

considerably. Since the State has been in the forefront in the battle for a cleaner environment, it has been able to do so at somewhat lower costs. The question is not if one is going to pay but when. Since costs are generally rising, being in the forefront has provided some cost advantages.

Regulatory Agencies

Mr. Conrad Simon, Director of Air and Waste Management Division, U.S.

EPA, Region II

Mr. Simon provided a federal perspective on the air pollution control program in New Jersey, a program for the most part defined through the regulations adopted under the State Implementation Plan. Based on ^{the} seven criteria ~~upon~~ ⁱⁿ which the Clean Air Act defined a successful state air pollution control program, ~~he indicated that~~ ^{MR. SIMON DECLARED} New Jersey's program is "highly successful." ^{APPROVAL} That determination was made through four different processes including SIP review and ~~approach~~ ^{STATE'S} ongoing oversight of the ~~states~~ ^{STATE'S} implementation of its program, formal quarterly reviews and annual audits. With respect to the effectiveness of the program, Mr. Simon noted that the primary and secondary standards for sulfur-oxide have been met throughout the state. The primary standard for particulates ^{WITH} is being met, ~~while~~ only a small area in Northeast New Jersey ~~is~~ not meeting ~~the~~ secondary standards. In addition, reasonable progress has been made in addressing and meeting the standards for carbon monoxide and ozone.

Mr. Simon also commented on program weaknesses. One such area is grandfathered sources. Since permits are not required, it is difficult to determine whether any changes have occurred and the state of compliance. A second area of weakness is the failure of ~~the~~ DEP to accept delegation

Another area is ^{the} possible inconsistency in regulation and enforcement which may be brought about by

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for certain new source performance standards such as asbestos demolition/renovation operations and associated waste disposal. Another area is that

State reliance on permit conditions instead of regulations to ensure compliance by major sources, ~~may create inconsistencies in regulation and enforcement.~~ *Mr. Simon further areas what* Further, ~~he suggested that~~ regulation emissions is not yet effective. In particular, the process used to regulate odors and ~~other~~ *and to respond to some* citizen complaints is cumbersome. A problem of marginal program funding has threatened the implementation of ozone control measures. Finally, the DEP has not received the ^{full} support of other state agencies to carry out its mandate.

With respect to future regulatory needs, Mr. Simon addressed four general areas. The first was the need for new regulations, particularly to deal with the revised particulate matter standard (PM₁₀) being proposed by the EPA and to attain ozone standards. The second ^{area of} need concerned revision of current regulations to correct the calculation procedures for control of volatile organics from coating operations, to improve the motor vehicle anti-tampering inspection program, ^{to expand} ~~an expansion of~~ the list of toxic substances contained in subchapter 17. Another area of need identified by Mr. Simon was emergency response preparedness. Finally, ~~while~~ ^{while} he noted that the state has historically met and surpassed federal requirements with respect to communication with the public and the industrial community, additional benefits from improved communications can exist.

HP Mr. Herbert Wortreich, Assistant Director, Division of Environmental Quality, NJ Department of Environmental Protection

Mr. Wortreich provided an abbreviated history of the air pollution control program in New Jersey, noting that in 1954 the State became the first in the nation to have a statewide air pollution control law. Given

the States' early commitment ~~to air pollution control~~, Mr. Wortreich describes the program during the last 15 years as "one of a balance between fulfilling the mandates of federal law and the objectives of the State." The latter are often in excess of federal requirements. The program is "also one which attempts to identify threats to public health, devise and carry out strategies to eliminate such threats, and measure and track the progress being made." It develops and monitors the State Implementation Plan which is carried out in conjunction with other state agencies.

With respect to attaining and maintaining ambient air quality, Mr. Wortreich reported that there were no violations of ~~the~~ sulfur dioxide *STANDARDS* since 1971. Only one site has recorded a violation of the primary standards for particulates since 1980. Further, no violations of the standards for nitrogen dioxide ^{*HAVE OCCURRED*} since 1973. While violations of the ozone standard have been recorded at all monitoring sites in each year since 1974, the average concentration of ozone has been decreasing. Improvements in ambient levels of carbon monoxide and lead have also been observed.

Mr. Wortreich suggested that two more traditional forms of pollution - visible emissions, and persistent, single-source ~~odors~~, have been brought to irreducible minimums. He also suggested a network of strategically-located private citizens periodically reporting to a central location to deal with intermittent and short-lived odor problems.

Fear of the unknown and lack of reliable information have impacted on public perceptions of toxic air pollutants, according to Mr. Wortreich. While this situation fostered legislation and provided funding to deal with the "pollutant of the month," ^{*he said,*} "energies and resources tend to become diverted from other pollutants which more urgently need attention in order to protect public health, but which are not perceived as such."

The prevention of accidental releases of toxic substances, though of great concern, "has a high potential for leading the air pollution control program into uncharted and unfamiliar paths." Mr. Wortreich questioned whether the program is in the best position, legally and technically, to undertake such a responsibility.

Finally, Mr. Wortreich identified the following issues ^{SLATED} to receive considerable attention by the program in the immediate future: "attainment of the ozone and carbon monoxide ambient air quality standards, toxic air pollutants in general, prevention of accidental releases, development of State Implementation Plans for respirable particles and for visibility, acid deposition, ^{and} indoor air pollution; more intimate intermedia coordination, and quality assurance."

Mr. Richard Hills, Program Coordinator, Middlesex County Health Department,
Air Pollution Control Program

Mr. Hills described the formation of a local air pollution control program, the Central Jersey Regional Air Pollution Control Agency, and its merger in 1982 with the Middlesex County Health Department to form the Middlesex County Health Department-Air Pollution Control Program (MCAPCP). He further described Middlesex County's DEP-approved uniform Air Pollution Control Code. The code applies a "uniform set of standards to all actual and/or potential sources of air pollution across the county." Its intent ^{is} ~~being~~ to place enforcement and uniform standards into the hands of local authorities.

The county also has a DEP-certified Hazardous Substance/Emergency Response Program. Between October 1984 and January 1985, the program had to respond to 15 major incidents. These prompted adoption of Senate

Bill 2480 which "increases penalties and mandates more stringent reporting parameters for releases into the environment."

Mr. Hill noted as advantages of a local program the intimate knowledge of the respective areas of jurisdiction and the personalized services in resolving complaints. Such a program is consistent with intent of both the original Federal Clean Air Act and PL 443.

Citizens Groups

Ms. Linda Stansfield, American Lung Association of New Jersey

Ms. Stansfield reported that there has been a steady, gradual reduction in the quantity of every criteria pollutant except ozone in New Jersey air since 1970. ^{she expressed} Concern ~~was expressed~~ ^{erratic} over the erratic, upward trend in levels of ozone and also over the consequences of noncompliance with EPA standards. She also noted that while point sources of certain toxic air pollutants are controlled through the permit process, the more problematic and prevalent area sources are not controlled.

Using the results of public polls, Ms. Stansfield illustrated the perceptions of and concerns over the environment of the citizens of New Jersey. Based on phoned complaints to the Association, she identified the following major areas of concern related to air quality: (1) ozone and smog, (2) suspected pollutants reported by the press, and (3) proposed pollution sources. Three other areas of public concern include: (1) acid-rain control, (2) transportation decisions and (3) motor vehicle emissions inspections. Ms. Stansfield noted the public need for improved information on these subjects.

Several suggestions were provided by Ms. Stansfield. First, the Council should study in great detail the states' monitoring network to

assure that it represents a scientific approach to data collection. Second, the cost of additional monitors needed at suspected pollution sources should be borne as much as possible by the sources. Third, she suggested that the DEP and Clean Air Council should adopt more pervasive public communications. Rather than retreating "in the face of industries' threats and EPA's lax image," ^{she said,} "it is time for DEP to get New Jersey's air pollution problems in rational order, and then take that long-term agenda to the public and ask for the public's support." Finally, she suggested that the DEP publish the annual air quality report in more readable form and ^{the report,} ~~it~~ along with daily air quality forecasts, should be better promoted to the media.

Ms. Jennifer Nash, Executive Director, Delaware Valley Citizen's Council
for Clean Air

Ms. Nash commended DEP's interest in facilitating public participation. However, she noted its responsiveness to public concerns about certain problems such as malodorous or visible emissions has been lacking at times. As a specific example she described a problem associated with C.J. Osborn Chemical Company in Pennsauken.

A major part of DEP's enforcement problem, according to Ms. Nash, is that it is short-staffed with 34 inspectors state wide. While some ^{inspectors} are on call after 4:30 p.m., ^{she claimed,} since most illegal activity occurs after nightfall, she suggested that some be assigned to night work. She further noted that staff levels are 20% below what they were at their peak. A second constraint to enforcement, ^{she said, has been budget limitations,} ~~have been budgeting in nature.~~ She described a third ^{constraint} as the attitude of "many" DEP personnel. She again used the C.J. Osborn Chemical Company case as an example.

Ms. Eleanor Gruber, Co-Director of the Natural Resources Committee of the League of Women Voters of New Jersey

Ms. Gruber addressed the issue of public participation, and in particular, public responsibilities associated with solid waste-to-energy facilities. She urged state and county officials to promote communication between industry, residents and government. In addition, she expressed need for "the State to provide comprehensive monitoring facilities in the planning and construction phases, and continuing throughout the life of the plant." Recognizing the need for an alternative to landfills, Ms. Gruber stressed the need to minimize potential risks through increased public participation.

Commerce and Industry

Mr. James C. Morford, Vice President, New Jersey State Chamber of Commerce

Mr. Morford strongly urged a consolidation of the host of environmental regulations with which business and private citizens must comply leading to a more efficient, understandable and cost-effective system beneficial to all New Jerseyans. He also suggested it is "in the best interest of the public to allow our air quality regulations to become more compatible with our State's economic development needs."

Mr. Morford argued that small businesses "are being forced to bear much of the burden of many new regulations." He cited the permit and certificate amendments adopted by the DEP on March 4, 1985 which raised the basic service fee for applications 625% from \$40 to \$250. He further stated that "the increasing abundance of Federal, State, and now even local air pollution regulations, all of which have similar goals but little conformity, is a confusing and costly undertaking for any business to ~~understand or even attempt to comply with~~

to comply, or even to attempt to understand."

Three specific areas of concern were identified by Mr. Morford as needing reform legislation or amendments. The first area dealt with equipment startup/shutdown and malfunctions. Language which amends NJAC 7:27-8 has been submitted to the DEP by the State Chamber, ^{to} offer some relief for facilities which have strong air compliance records. The second area concerns emission-testing programs for equipment leaks required by petroleum refineries. Several suggestions were presented as exemptions or adjustments to monitoring requirements. Finally, he noted the need to address the authority given to county governments to establish and enforce county air pollution control codes which can be more stringent than state law. In particular, the Middlesex County Air Pollution Code was cited as one which will adversely affect industries and the industrial tax base. He urged federal, state, and local agencies to develop a "total air pollution control program which is uniform, equitable and fair."

Mr. Robert Franklin, Vice President of Public Relations, Public Service,
Electric and Gas

Mr. Franklin described the shifts in the U.S. and N.J. economies from an industrial towards a service orientation since 1950. General macro-economic conditions, obsolete technologies, and high energy and land costs were identified as reasons behind the loss of manufacturing jobs in New Jersey. In addition, stringent environmental standards were identified as constraints to economic growth.

While the state was once perceived as having a bad business environment, overregulation, and high workmen's compensation and employment compensation

costs, more recently its image is improving. The shift to a service type economy was posed as a reason behind the changing image. New Jersey ranks third in the nation as a location for corporate headquarters and fifth as a location of high tech firms. In addition, the state has been extremely attractive to foreign firms. All these trends were used to support Mr. Franklin's prediction of a very positive economic future for the state.

Dr. Rocco Guerrieri, Chief, Office of Business Advocacy, NJ Department of Commerce and Economic Development

Dr. Guerrieri described the perception of the development community that the regulatory burden including its complexity, delays and uncertainties ^{is} one of the primary ^{deterrents} ~~is~~ to economic development. He then outlined some suggestions to improve the air pollution program in the state. The first was the need to reduce the current backlog in processing permit applications and to increase the review staff to prevent future backlogs. The recent permit service-fee increase should be used to assure these changes. Over-the-counter permit processing as in the case of service extension permits might also be used to reduce the backlog. Further, "a continuous and ongoing process of simplification and streamlining of applications and forms must be instituted."

With respect to regulatory changes, Dr. Guerrieri suggested that publication of a regulatory calendar "which would provide advance warning of new regulation and regulatory changes contemplated by DEP during the coming six months would provide an early alert and an added opportunity to provide input to proposed regulatory changes."

The DEP, according to Dr. Guerrieri, should also continue to strongly promote national air-quality standards. Since air pollutants, such as ozone

and its precursors, travel over long distances across geographic regions, equity requires broad-ranged standards.

Several innovative procedures to facilitate permit review were then described. These include: (1) a "One Step" Permit Identification System; (2) a "Directory of State Programs for Regulating Construction," (3) individuals to expedite interaction between state departments in concurrent permitting associated with complex projects; and (4) government ombudsmen to articulate its viewpoints before laws and regulations are put into effect.

Summary of Written Testimony

Two written testimonies were received during the 30 day comment period. Mr. Herbert Wortreich of the Division of Environmental Quality responded to Mr. Simon's ~~presentation~~. More specifically, Mr. Wortreich ~~responded to Mr. Simon's~~ comments about program weaknesses. With respect to grandfathered sources, Mr. Wortreich noted that there is in fact considerable information on these sources. Many of these sources are included in routine field inspections, while many others ^{now} under permits ^{and} ~~or~~ certificates were once grandfathered but have changed status.

To put in perspective Mr. Simon's statement about delegation for certain source categories, Mr. Wortreich pointed out that DEP has accepted delegation for 47 NSPS source categories, but not for two categories involving equipment leak standards. Similarly, of the five substances for which the EPA has promulgated NESHAPS, the department has accepted delegation for all standards with the exception of demolition/renovation operations involving asbestos. He argued that the program does not have the resources to address these.

Mr. Wortreich further argued against Mr. Simon's contention that reliance on permit conditions rather on regulations to achieve compliance may create inconsistencies in regulations and difficulties in enforcement. At the same time, he indicated agreement with the federal perception of the regulation of toxic emissions.

Concerning Mr. Simon's comments about fugitive emissions, Mr. Wortreich ~~said that~~ ~~agreed~~ that the program's procedure for dealing with odors ~~is~~ ^{maybe} somewhat cumbersome, ~~he argued that they have~~ ^{but overall it has} been workable and effective. He further stated that "in almost every case where the source of an odorous air pollutant has been identified, the program has been successful in eliminating the problem."

Mr. Wortreich noted that whereas the federal proportion of funding ^{for the overall} ~~program~~ ^{had been} ~~was~~ ^{of the total} nearly 60 percent, ^{where it is now} it has steadily dropped to less than 43 percent in the current year. Finally, Mr. Wortreich noted that the mandate to implement the SIP falls on the ^{on the} State, not just one agency even if ~~one~~ ^{it} has been designated to have the lead responsibility.

A second written testimony was received from Mr. John Wiley, Jr., Chairman, Middlesex County Air Quality Planning Committee. Mr. Wiley cited that Committee as "an example of an effective citizen participation group." He described the Committee membership goals and objectives. Finally, he summarized the recent activities of the Committee.